

APPEAL NO. 032219
FILED OCTOBER 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 31, 2003. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to the lumbar spine and that the claimant's impairment rating (IR) is two percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In her appeal, the claimant asserts error in each of those determinations. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, to her left ankle and that she reached maximum medical improvement on June 23, 2000. The claimant testified that she was injured when she slipped in water while she was mopping and fell on her left side. She maintained that she injured her left leg and low back in the fall. The parties also stipulated that Dr. M was selected by the Commission to serve as the designated doctor; that he assigned a two percent IR for the claimant's ankle injury; and that Dr. G assigned a nine percent IR for the left ankle injury, while he was her treating doctor.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to include an injury to the lumbar spine. That issue presented a question of fact for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It was a matter for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In this instance, the hearing officer was not persuaded that the claimant sustained her burden of proving that she injured her low back in the injury at work on _____. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant's primary challenge to the designated doctor's IR is that it does not include any impairment for the lumbar spine. Given our affirmance of the hearing officer's determination that the claimant's compensable injury does not include a lumbar spine injury, we find no merit in the challenge to the IR on this basis. However, the

claimant argued, in the alternative, that her IR should be the nine percent certified by Dr. G for her ankle injury. The hearing officer did not err in giving presumptive weight to the designated doctor's report, and in determining that the claimant's IR is two percent in accordance with that report. We cannot agree that the treating doctor's report constitutes the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and the treating doctor as to the correct IR to assign to the claimant for her left ankle injury. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report and adopting the two percent IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ATLANTIC MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge